

1 objection is limited to a claims resolution issue which can be
2 addressed in Touch America's bankruptcy case. And I think
3 that's their position as well if one reads the substance of the
4 last paragraph of their objection. Two, the Magten objection
5 on the scope of the releases. And I think that's a premature
6 issue, Your Honor, that will have to be addressed through the
7 approval of the Final Decree process. And with that I think I
8 would turn it over to the Department of Justice, Your Honor.

9 MS. SABO: Your Honor, my name is Kim Sabo. I'm with
10 the United States Department of Justice, and I represent the
11 United States of America. I am not a member of the Delaware
12 bar, but I did file certification this morning pursuant to
13 Bankruptcy Court Local Rule 9010, subsection (c)(2), stating
14 that I am an admitted member of another District Court, and I
15 will be subject to the Local Court Rules and any disciplinary
16 hearings or proceedings of this Court.

17 THE COURT: Thank you.

18 MS. SABO: I'd like to make a brief statement about
19 first the United States' arguments on the direct liability of
20 Northwestern, and then secondly on why the United States thinks
21 that this stipulation is not premature at this time. First as
22 far as direct liability, the United States filed a proof of
23 claim stating that there are approximately more than
24 \$14,000,000 in past costs, and possibly more than \$95,000,000
25 of future response actions that Northwestern would be liable

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1 for under the Comprehensive Environmental Response Compensation
2 and Liability Act, CERCLA, Section 107. And in our proof of
3 claim we made various statements as to why the corporate
4 structure of Clark Fork and Blackfoot, LLC does not provide
5 adequate limited liability protection for Northwestern. First,
6 because the LLC is a mere alter ego of Northwestern. And
7 secondly, if the Court were to determine that in fact the LLC
8 and Northwestern are separate entities, the United States would
9 argue in the alternative that the transferred substantial
10 assets on November 15th, 2002 was a fraudulent conveyance under
11 the Federal Debt Collection Procedures Act. And I can go into
12 more detail on those arguments if the Court would like. No,
13 okay.

14 And there is also -- there was a -- there exists a
15 specific exemption that was part of a public law passed in some
16 amendments to the Super Fund Act. It's specifically Section
17 118(g) of CERCLA. And it gives a very narrow area of liability
18 exemption to the owners and operators of the Milltown Dam. The
19 United States does not believe this exemption applies, because
20 the exemption is narrowed to only contaminated hazardous
21 substances that were released upstream of the reservoir, and
22 have come to be located in the reservoir. This exemption does
23 not apply to activities of the LLC's predecessor whereby they
24 bridged the sediments in the reservoir, and disposed of them
25 upon adjacent land into an area known now as the Upland Land

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1 Disposal Area, which is going to have to be cleaned up as part
2 of the site. And thus that relieves -- that exemption is not
3 effective.

4 Finally I'd like to make a statement as to why the United
5 States thinks that the stipulation is not premature as of this
6 time. Currently negotiations for the Final Consent Decree are
7 proceeding in good faith. But if the Final Consent Decree is
8 not reached or entered, the stipulation and settlement
9 agreement will be voided, and thus not harm the Creditors.
10 Secondly, if the Creditors, especially Magten, is concerned
11 about the fairness of the releases that will be in this future
12 Consent Decree, there's another forum for them to bring up
13 these concerns, specifically under 28 C.F.R. Section 50.7, the
14 Final Consent Decree will be subject to 30 days public notice
15 and comment, at which time Magten could submit a comment. The
16 Consent Decree would then be reviewed by the District Court of
17 the District of Montana, under the 9th Circuit standard which
18 requires any Consent Decree -- the Judge to review it for
19 fundamental fairness and to make sure that it's adequate and
20 reasonable. So we think that there's an adequate forum for
21 Magten's objection in the future.

22 THE COURT: Walk me through that again, in terms of
23 the process. Let me just restate it and see if I understand
24 it.

25 MS. SABO: Right.

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1 THE COURT: If I understood what Ms. Denniston
2 correctly, she said some of the parties, who I take to be the
3 United States and/or the State of Montana or its various
4 agencies, are reluctant to continue to the next stage of trying
5 to negotiate the extent of these releases and some of the other
6 final details, in the absence -- because they were dealing with
7 a Chapter 11 Debtor in the absence of in effect an Order from
8 the Bankruptcy Court authorizing them to do so or approving the
9 overall nature of this agreement subject to those releases
10 being approved. Now, let's say that you negotiate releases
11 that are satisfactory to all the various parties. How then
12 does -- explain to me again how then does a party to this case
13 who may think that the releases are inadequate for some reason,
14 that they are not sufficient to constitute a global settlement,
15 that there's remaining liability for the Estate that should
16 have been part of the release for example, raise that concern?
17 And how does that then get addressed?

18 MS. SABO: Okay. Once a Consent Decree is signed by
19 all of the parties, the Department of Justice is required
20 pursuant to 28 C.F.R. Section 50.7 to publish the Consent
21 Decree, notice of the Consent Decree, in the Federal Registry,
22 and to have a period of 30 days of public notice and comment
23 under which anyone can submit comment. And that would include
24 Magten or anyone else --

25 THE COURT: So that --

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1 MS. SABO: -- who had a concern.

2 THE COURT: Somebody who lives in Milltown, who
3 doesn't like the deal, or --

4 MS. SABO: Correct.

5 THE COURT: -- someone who lives somewhere in western
6 Montana, as well as somebody who may have a financial interest
7 in the transaction, such as a Magten or a Harbert or somebody
8 like that.

9 MS. SABO: Correct. If comments are submitted, then
10 the United States would provide a response to those comments in
11 its motion to the Court for entry of the Consent Decree,
12 stating why those -- you know, responding as to why those
13 comments are not a reason to bar entry of the C.D. And the
14 Judge -- the District Court Judge is then supposed to review
15 the Consent Decree under a standard set forth in United States
16 vs. The State of Oregon at 913 F. 2nd. 576 at page 580, in the
17 9th Circuit in 1990, that requires the Judge to find that the
18 Consent Decree is fundamentally fair and adequate and
19 reasonable. And that would include a review of any of the
20 release provisions.

21 THE COURT: All right. Now is there ever any -- is
22 this the one and only approval process that goes on in the
23 Bankruptcy Court? I'm kind of looking at Ms. Denniston there.

24 MS. SABO: If I may, Your Honor, generally after it
25 is approved by the District Court, then we bring it to the

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1 Bankruptcy Court for approval. In some cases we've had
2 Bankruptcy Court approval first, and then District Court
3 approval. And I'm not sure if there's a standard method for
4 that.

5 THE COURT: Well, so then after the Consent Decree is
6 approved by the District Court, it comes back here? Or this is
7 the approval, then it goes to the District Court, then its
8 final? I'm just trying to understand the order and the
9 process.

10 MS. DENNISTON: If I may, Your Honor, the procedure
11 that the Debtor is proposing at this juncture is that we could
12 get approval today based on the contingencies set forth in the
13 docket. That we would file the notices -- that when this goes
14 out for public comment that we would file notices in this case,
15 and circulate to those parties copies of the Decree so that the
16 Bankruptcy Estate would have given notice that this was going
17 through the public comment. We expect that the public comments
18 to be made by any of the Creditors to this Estate through that
19 initial process, because it doesn't seem appropriate to burden
20 the Estate twice. In the event that there are issues raised
21 through that public comment, then we would bring this back to
22 the Bankruptcy Court for approval after the Federal District
23 Court had approved it. In other words it's the Debtor's hope
24 that the releases will be satisfactory. And in the event that
25 no one raises objections or comments during the comment period,

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1 if there are no comments, we wouldn't envision bringing it
2 back. If there are comments, we would be bringing it back to
3 this Court.

4 THE COURT: Based on those comments as opposed to
5 based upon objections actually filed in the Bankruptcy Court
6 docket.

7 MS. DENNISTON: That's correct, Your Honor. I think
8 that given the work that the Debtor has put into this to be
9 here today with all of these parties, that it would be
10 unnecessarily burdensome to relitigate those issues.

11 THE COURT: Although what I hear you saying is that --
12 let's say that the scope of the release is not satisfactory to
13 Magten. Just assume that when we get to the end of the day,
14 they don't think it's a satisfactory release. So they file a
15 comment that goes to the -- under the C.F.R. provision that
16 then goes to the District Judge, as part of the approval of the
17 Consent Decree. Let's say hypothetically that the District
18 Judge decides that this is a fundamentally fair provision, the
19 releases are fundamentally fair, and therefore he approves them
20 over the objection of Magten. My question is then do we have
21 another hearing here where Magten comes back again and says to
22 me, "Well, it was approved by the District Judge. But now we
23 want to approve it under a different standard in the Bankruptcy
24 Court too." Yes or no? I'm just trying to understand.

25 MS. DENNISTON: I think, Your Honor, I can't speak to

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1 whether and what Magten might do under that issue. But I would
2 tell you that the Debtor's position is that they would have the
3 right to file that motion. And the Debtor would be arguing
4 squarely that we have to give deference to the findings of fact
5 by the Federal District Court Judge in Montana who has
6 jurisdiction at that point.

7 THE COURT: We don't really know what's going to
8 happen. And --

9 MS. DENNISTON: You're right, Your Honor. I can't
10 predict the future.

11 THE COURT: So we're sledding down a somewhat unknown
12 path here. But the basic premise is that we need to get this
13 ball rolling. And the way to get the ball rolling so that you
14 can go to the next stage to negotiate the releases is by
15 getting the contingent approval today.

16 MS. DENNISTON: That's correct, Your Honor. And I
17 think with the awareness of everyone, particularly the Debtor's
18 willingness to provide notice of when this goes out to comment,
19 that there is a process that provides due process and notice to
20 any Creditor or other party that wants to comment.

21 THE COURT: All right, thank you. All right, Ms.
22 Sabo, I'm sorry to interrupt you. Do you have more?

23 MS. SABO: No, that was it.

24 THE COURT: All right, thank you. Do we have -- who
25 else do we have? Okay, come forward, counsel, thank you.

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1 MR. MONACO: Good afternoon, Your Honor, Frank Monaco
2 for the State of Montana. Your Honor, the State of Montana
3 also supports the settlement motion. We filed a proof of claim
4 asserting theories of direct liability against the Debtor in an
5 amount of \$135,000,000. Many of our theories and claims and
6 rights that we assert in the proof of claim overlap or are
7 similar to those the Department of Justice sought. I'll adopt
8 Ms. Sabo's comments with respect to all the reasons why this
9 should be approved. The only thing I would like to add is that
10 the Debtor is going to make a \$3.9 million payment, as well as
11 transfer certain land and water rights to the State of Montana
12 in return for a release from this liability subject to the
13 conditions that Ms. Denniston put on the record earlier. Thank
14 you.

15 THE COURT: All right, thank you.

16 MR. CURLEY: Good afternoon, Your Honor, Richard
17 Curley of Holland & Hart in Denver, representing Atlantic
18 Richfield Company. Your Honor, I won't repeat, but will
19 instead adopt the liability arguments described by Ms. Sabo
20 today. I guess I would like to add that as my client as a
21 party that has been in negotiations with Northwestern and its
22 predecessor, the Montana Power Company, for years now, has
23 worked out as of September 10th, 2003 a second settlement
24 agreement. It replaced a prior settlement agreement that was
25 voided by its own terms because of the nature of the remedy

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1 that EPA has indicated that it will select. But it's a party
2 nonetheless that has spent years in negotiations with
3 Northwestern, and has now been in negotiations with the
4 Government parties, including the tribes and Northwestern since
5 late 2002. It is most anxious to get some indication from Your
6 Honor today that we are on a path that will be acceptable. And
7 so my client would urge the Court that far from being
8 premature, that some indication is very much necessary. We're
9 incurring -- my client is incurring very substantial costs in
10 these negotiations of the Consent Decree in Montana, as of
11 course are the other parties. So we certainly strongly argue
12 that this motion is not premature. To give you --

13 THE COURT: Now your client operates the facility in
14 Anaconda. Is that right?

15 MR. CURLEY: Well --

16 THE COURT: And is that where -- and also if I read
17 the papers right, there is a large mine in Anaconda, and that
18 there's also a facility in Butte. Is that right?

19 MS. CURLEY: Your Honor, the mine which my client no
20 longer owns is in Butte. A portion of the mine is currently
21 operated by another party that's not really relevant though to
22 the Milltown matter, which is about 125 miles away. And there
23 is a smelter -- well there was a smelter, I should say, that
24 was operated in Anaconda until the summer of 1980. And that's
25 now closed. My client is in the process of remediating the

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1 Butte and Anaconda areas under EPA's oversight and direction,
2 as well as the oversight and direction of the State of Montana,
3 Department of Environmental Quality.

4 At the Milltown site, Your Honor, Atlantic Richfield has
5 spent as of September 2003, as indicated in our proof of claim,
6 approximately \$14.2 million on CERCLA response costs. And they
7 continue to spend substantial sums -- and their insurer, I
8 should say, under a confidential insurance agreement, continues
9 to spend substantial sums on remedial design with respect to
10 the likely remedy to be selected by EPA. In addition to that,
11 in EPA's April 2003 proposed plan, they indicated that remedial
12 costs for the Milltown site would be between 90 and
13 \$150,000,000. That number is still in flux. I think in the
14 most recent revised proposed plan issued by EPA about a month
15 ago, that number has come down somewhat. And my client is
16 certainly hoping to be able to remediate this site for less
17 than 90 to \$150,000,000. But even if it were successful in
18 that attempt, it's going to cost in excess of \$50,000,000
19 certainly to remediate this site. As you may know, Atlantic
20 Richfield filed in January of this year a proof of claim in
21 this matter for between 104,000,000 and \$164,000,000 for the
22 Milltown site.

23 I guess the only other thing, Your Honor, is a minor
24 housekeeping matter. We wanted to point out that in the second
25 sentence of footnote 5 of Northwestern's motion there is an

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1 indication that we and the Government agencies, both the EPA
2 and the Montana DQ have agreed to modify the proposed remedy.
3 And although we are in confidential discussions about the
4 integration of certain restoration measures with remediation
5 measures, we have not agreed with the agencies to modify the
6 remedy. They don't usually make it a practice, frankly, to
7 consult with my client about agreed upon changes to remedies.
8 They're the agencies that decide what the remedy will be. And
9 as I say, we are in certain discussions about the integration
10 of CERCLA remediation with CERCLA restoration. But we wanted
11 to on the record state that we have not made any agreements
12 with the Government agencies on that point. I have nothing
13 further.

14 THE COURT: All right, thank you.

15 MR. KAPLAN: Good afternoon, Your Honor, Gary Kaplan
16 of Fried, Frank, Carr, Schreiber & Jacobson on behalf of
17 Magten. Your Honor, I'll be very brief. The issues that
18 Magten has, as were stated before by Ms. Denniston, is that the
19 releases are being left to chance. One of the issues that's
20 being settled right now, as we heard from Ms. Sabo, is the
21 Government's contention that the transfer of assets from Clark
22 Fork up to Northwestern is a fraudulent transfer. That was one
23 of the claims that was being raised. We now have as part of
24 this global settlement the Debtor saying, "Well, you know,
25 yeah, we're fighting that issue with Magten. Now we're going

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1 to be fighting that with the grieving Plaintiffs. Got to
2 settle this issue with the U.S. Government, because it's not a
3 great fact to have the U.S. Government joining in and saying
4 yes it is a fraudulent transfer." And the problem that that
5 raises for Magten is we now have the Debtor with great
6 incentive to get this issue settled. They don't want to have
7 that issue see the light of day. And they're going to settle.
8 And we're being told, "Trust us. We'll get releases that are
9 acceptable to everybody. If you don't like it, well there's a
10 Federal Register. You can file something there and, you know,
11 fight about it in Federal Court in Montana."

12 Your Honor, that's not the way this Chapter 11 case should
13 run by the Debtors. We've heard from -- if I understood
14 correctly, what's being said by the other parties here is that
15 they're looking for some comfort from the Debtor. I didn't
16 hear each one get up and say, "Unless we get blanket approval
17 today for whatever settlement we want -- unless we get that
18 blanket approval, we're walking away." I heard statements such
19 as, "We need some comfort." I heard from the U.S. that, "Well,
20 in different cases it's done differently. Sometimes they do it
21 in the procedure that the Debtors have suggested. And
22 sometimes they do it where they come back to the Bankruptcy
23 Court later on after approval." And all we're asking for today
24 is let them come back to the Bankruptcy Court. Once they've
25 fully negotiated, and they say what the releases are, they can

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1 come back. And maybe as with Harbert -- they've resolved their
2 objection. Maybe they'll have resolved our objection. But we
3 should not be prejudiced and have to sit by and our only
4 recourse is to file something on the Federal Register, and then
5 go before a Judge in Montana who's gonna look at us with no
6 understanding of the context of this case, or the fact that
7 Creditors, you know, having rights as the Bankruptcy Court
8 understands, and counsel for the Parties-In-Interest being
9 allowed to be heard. It's just -- Magten doesn't believe that
10 it's appropriate that we have to go through those hoops.

11 THE COURT: Okay. Do you wish to cross examine any
12 witness on behalf of Northwestern?

13 MR. KAPLAN: Don't wish to cross examine any
14 witnesses. The one item that we'd like to take representation
15 of counsel on is that Clark Fork is being separately
16 represented in these negotiations. I'd just ask that they make
17 a representation as to that effect.

18 MS. DENNISTON: Your Honor, we're not making that
19 representation because right now Clark Fork is being
20 represented by Northwestern.

21 MR. KAPLAN: I don't need to cross examine him.
22 That's sufficient.

23 THE COURT: Okay, Ms. Denniston.

24 MS. DENNISTON: In closing, Your Honor, I think that
25 the Court has an accurate overview of the efforts made by the

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1 Debtor and all the other parties to be before the Court today
2 with what is a global settlement. I think that the comments
3 made by ARCO are particularly telling in terms of its
4 willingness to consider -- or to continue down this track and
5 make the investment of time and money to get to a Final Decree
6 without indication that we have the Bankruptcy Court's approval
7 of the settlement. As to Magten's comments about jumping
8 through hoops, I don't think any hoops are being required of
9 Magten that it hasn't already availed itself of. We already
10 know of two instances where Magten has brought and initiated
11 lawsuits in Montana. It certainly won't be any great
12 difficulty for Magten to respond to or to file any comments to
13 the scope of the releases. And the Debtor has already
14 undertaken the burden to be sure that the notice goes out when
15 the Final Decree is reached, and that matters can be fully
16 fleshed out with the District Court and with this Bankruptcy
17 Court if and when need be.

18 So with that, Your Honor, unless the Court has questions
19 about the Order being requested today, I would ask the Court to
20 approve the motions with the Debtor to be submitting one joint
21 Order. We've received some comments during this hearing from
22 Touch America that are going to require the Debtor to
23 recirculate the Form of Order to be sure that it's acceptable.
24 It has to do with the reservation of Touch America's rights in
25 the event that Northwestern were to assert indemnification

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1 claims in Touch America's bankruptcy. It does not impact the
2 sum and substance of the relief being requested by the Debtor.

3 THE COURT: Let me just ask one more time to make sure
4 that I understand. Let us assume that the scope of the
5 releases are not satisfactory to Magten, and Magten has a
6 continuing objection. A notice goes out. It files its
7 comments that then triggers the proceedings in front of the
8 District Court. And the District Court resolves it. Now, of
9 course, the District Court could come to the conclusion that
10 it's not fundamentally fair. So if that's true, then that
11 solves Magten's problem in the sense that maybe you go back to
12 the drawing board and you try to renegotiate new leases that
13 meet whatever objections are raised. But let's say that the
14 District Court does approve it. Now, is it your view that then
15 there would still be a hearing here for me to decide whether or
16 not for purposes of the bankruptcy case I'm going to approve
17 that or not? And if so, what's the standard that I'm applying
18 at that point?

19 MS. DENNISTON: In the event -- Your Honor, and again
20 this is kind of predicting the future and speculating as to
21 what issues might be raised as to the releases themselves. I
22 think that I could see a circumstance where there would be a
23 motion filed by Magten were they unhappy with the result
24 obtained in Montana. I think at that point this Court would
25 have to look at the record in Montana and the collateral

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1 estoppel and potential res judicata issues as to the findings
2 of fact, and determine whether or not the scope of those
3 findings is sufficient to meet the findings that this Court
4 would also require.

5 THE COURT: Well, it really would be more of a
6 collateral estoppel than a res judicata --

7 MS. DENNISTON: Yes, Your Honor, it would be.

8 THE COURT: -- issue, since it sounds as if the
9 District Court may not be applying exactly the same standard --

10 MS. DENNISTON: That's correct.

11 THE COURT: -- that I would be applying.

12 MS. DENNISTON: And --

13 THE COURT: I mean it's not really deciding the same
14 question as I would be deciding.

15 MS. DENNISTON: Well, and without knowing what
16 findings the District Court may or may not make, it's hard for
17 me to predict to this Court what issues might be remaining for
18 this Court to look at, or to speculate as to the strength of
19 the collateral estoppel arguments. And I think that would be
20 something that would be subject to review. I can assure the
21 Court that the Debtor would be an active participant in that
22 process, so that we can endeavor to be as efficient as
23 possible.

24 THE COURT: Okay, thank you. So let me ask counsel
25 for the United States and Montana and ARCO the following

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1 question. What happens to these ongoing negotiations if I were
2 not to approve this motion today, on the ground that it was
3 premature because the scope of the releases had not yet been
4 defined?

5 MS. SABO: I think there would be very serious
6 setbacks. And I think it might disintegrate negotiations as
7 they're going forward at the moment. Of course the parties do
8 not have to settle this issue. The United States could go
9 forth with its proof of claim. That's all I have to say.
10 I'll hand it over to the State and Atlantic Richfield.

11 MR. CURLEY: Your Honor, obviously I obviously can't
12 speak for the Governments, but as an environmental lawyer who
13 specializes in CERCLA matters I'd be very concerned that both
14 the United States and the State would feel very insecure going
15 forward with a very expensive, time consuming negotiation.
16 With preliminary indication from the Court other than that,
17 this settlement is likely to be approved.

18 THE COURT: I understand the economics of this. The
19 Debtor has a fixed component that it is bringing to pay.
20 Correct? And you are in effect assuming the much larger, more
21 open ended component.

22 MR. CURLEY: That's correct, Your Honor. The Debtor
23 has agreed to pay \$7.5 million to my client, the remaining 2.5
24 million of the original \$10,000,000 settlement to the State,
25 and then I believe another \$1.4 million to the State on top of

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1 that under the agreement contained in the stipulation. I guess
2 the one thing that I -- as a non-bankruptcy lawyer I feel
3 compelled to point out to the Court that if Magten or some
4 other party doesn't like the covenants not to sue and
5 reservations of rights that Northwestern and Clark Fork's
6 counsel can negotiate on its behalf, and is a party to those
7 negotiations working closely with those other settling or
8 putative settling Defendants, I can tell you their counsel is
9 working very hard, very aggressively to get as good a covenants
10 as they can. They are represented by two very experienced
11 CERCLA lawyers, one a former DOJ enforcement attorney. And
12 they are pushing as hard as they can at negotiation to get as
13 good a covenants as they can. This is not like a normal
14 private party negotiation where either Northwestern or Clark
15 Fork and Blackfoot or myself on behalf of Atlantic Richfield
16 can just make a demand for an absolute release of claims and
17 get what's known as a model consent decree that EPA and DOJ
18 operate under. And they're willing, if you push hard enough,
19 to make certain changes to it. There's a lot of history as to
20 what changes they'll make under certain circumstances. And
21 we're trying to use all of that to Atlantic Richfield's
22 benefit, as their counsel is for Northwestern's and Clark
23 Fork's benefit.

24 If they -- and they'll get as much as they can. If they
25 don't sign a Consent Decree ultimately, I would assert that

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1 what is likely -- and I would myself at that point have to work
2 as hard as I can for Atlantic Richfield, to convince EPA to
3 issue a unilateral Order to Northwestern and Clark Fork and
4 Blackfoot. If my client can't get them to do their fair share
5 under the settlement and under the stipulation and ultimately
6 under a Consent Decree, then we're going to have to push the
7 agencies. And I would assume that the agencies themselves
8 would be quite interested, frankly, in issuing a unilateral
9 Order at that point. And they have, as you may know, Your
10 Honor, under Section 106 of CERCLA, pretty extraordinary powers
11 to force companies like Northwestern or Atlantic Richfield to
12 do their bidding. And so it's not a happy world, I'd submit,
13 that they would find themselves in at such point as a party
14 like Magten or any other goes in and defeats a Consent Decree.

15 THE COURT: All right, thank you.

16 MR. MONACO: Your Honor, Frank Monaco again for the
17 State of Montana. Your Honor, one practical problem with not
18 approving the stipulation today is -- and again this relates to
19 Item 16, which is the motion to approve the stipulation between
20 ARCO, the Debtor, and Clark Fork and Blackfoot. Our -- the
21 stipulation provides that our objections to that motion are
22 resurrected if this isn't approved. So that's another
23 practical problem if it isn't approved today. Thank you.

24 THE COURT: All right, thank you.

25 MS. DENNISTON: Your Honor, I'll be brief. Just a

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1 couple of closing remarks. In listening to the comments that
2 have been made to the Court, I wanted the Court to be aware of
3 one thing. And that is that the negotiation of this
4 stipulation and the settlement were conducted through the
5 witness that we have here today, Michael Young, and through the
6 law firm of -- it's Lee Graves, the Graves law firm. And that
7 is the special environmental counsel to the Debtor. To the
8 extent that there has been Paul, Hastings involvement, it has
9 been to be a scrivener to effectuate the bringing of the motion
10 and the orchestration of this hearing. And the other point
11 that I think that is noteworthy aside from the things the Court
12 has heard from the counsel is that this motion is a win/win for
13 Clark Fork and for the Debtor in that it takes what is fairly
14 extreme liability as evidenced by the assertions in the claims
15 file, caps that, and provides a mechanism for settlement.

16 The scope of the release issue an issue in and of itself
17 that is subject to due process, notice and a hearing, and
18 everybody's rights can be fully protected. So it's the
19 Debtor's very strong position, and a position supported by the
20 Committee, that this settlement and the stipulation are in the
21 best interest of all the parties involved. And to jeopardize
22 them because at this point we can't have certainty on the scope
23 of the releases which are subject to an independent judicial
24 process and a thorough betting would be a tragedy for this
25 Bankruptcy Estate as we move to confirmation. And it would

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1 force the Estate to deal with a claims estimation process that
2 could be probably described as not being short of horrendous if
3 one looks at all the claims that these parties have filed. And
4 with that, the Debtor would ask for the Court's approval.

5 MS. CAPDEVILLE: Your Honor, if I may, this is the
6 State of Montana. One of the other reasons -- we find this --
7 we've been negotiating this since the Fall of 2002. And it's
8 turned out to really --

9 THE COURT: Excuse me.

10 MS. CAPDEVILLE: -- be difficult to get some movement.
11 And at this time the State of Montana has also been willing to
12 commit 7.6 million of its own money towards this Milltown
13 restoration. But at that same point we need that commitment
14 from Northwestern that the money from them will be coming as
15 well.

16 THE COURT: All right. I'm sorry, I just -- I wanted
17 to interrupt you to make sure that your name was stated for the
18 record.

19 MS. CAPDEVILLE: It's Mary Capdeville, Your Honor.

20 THE COURT: All right, thank you. Anybody else?

21 MS. PHILLIPS: Your Honor, Margaret Phillips on behalf
22 of the Committee. We're in support of the comments made by the
23 Debtor. This has been fully vented in front of the Committee,
24 and they're in support of this Order being entered for quick
25 settlement. Thank you.

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1 THE COURT: All right. We have Items 16 and 20 on the
2 docket that are up for approval today. Item 16 was --

3 MS. DENNISTON: No, I just -- I came up, Your Honor,
4 because I --

5 THE COURT: You want to listen.

6 MS. DENNISTON: I'm not interrupting you.

7 THE COURT: -- was originally an agreement among the
8 Debtor, Clark Fork, and ARCO to resolve certain environmental
9 issues having to do with the Milltown Dam near Missoula,
10 Montana. This was objected to by the United States and by the
11 State of Montana, among others. Those objections then were
12 resolved through further negotiation that led then to Item #20,
13 the stipulation that includes barter terms, some more money,
14 and resolves the objections of the entities. Now, I have not
15 heard from the two tribes that were mentioned. Are they
16 separately represented or -- in here?

17 MR. HOBENKOTTER: Your Honor, this is Joe Hobenkotter.
18 I'm the staff counsel for the Confederated Salish and Kootenai
19 Tribes.

20 THE COURT: All right. And I take it that your
21 clients are in favor of this agreement.

22 MR. HOBENKOTTER: Your Honor, I'm not at bar before
23 the Court in Delaware, but I'm sitting in on this phone call
24 today to simply stand and support the United States and State
25 of Montana as our co-trustees for the natural resources. We

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1 are in support of the statements that Ms. Sabo put forth today.

2 THE COURT: All right, thank you. So the objection
3 process on Item 16 then led to Item 20, which had continuing
4 objections at this point from Touch America that is being
5 resolved by reservation language we put in the Order. There
6 was an opportunity for Harbert, who was an original objector,
7 to continue to object. But I'm advised by both the Debtor and
8 Harbert's counsel that following the provision of information,
9 Harbert elected not to file a further objection to Item #20.
10 There is a continuing objection by Magten.

11 The proposed stipulation and settlement provides a cap on
12 the liability of Northwestern on its liability in connection
13 with the environmental remediation of the Milltown Dam. The
14 primary financial obligations under -- as I understand it, then
15 lie with Atlantic Richfield under this arrangement, and that
16 Northwestern agrees to pay directly a substantial sum to
17 Atlantic Richfield, and also to pay sums to the State of
18 Montana. So the benefits to the Estate here are to resolve --
19 although it's a substantial number and amount that is
20 materially less than the claims that have been filed against
21 the Estate, and to cap those amounts rather than to have those
22 amounts be of an unlimited nature. On the other hand, there is
23 the issue of whether or not Northwestern itself has any direct
24 liability for these claims, which is an issue that would
25 require substantial litigation to resolve. And all of the

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1 objecting governmental agencies have stated on the record their
2 basis for belief as to why it is they think they could in
3 effect hold Northwestern liable under the applicable laws for
4 the remediation costs that are involved here.

5 So this is a settlement where the Debtors are capping
6 their liability, and in exchange in effect agreeing directly to
7 pay and compromising those issues. I know it's much more
8 complicated than that, but those are a couple of the key
9 points. Of course one of the key points is that, is the Debtor
10 actually getting out of the deal. And that's the scope of
11 release issue. Whether or not it truly is a global settlement,
12 or whether or not there is remaining liability on behalf of the
13 Debtor, that the Debtor should negotiate now so that we know
14 what it is the Debtor is actually paying for. That's kind of
15 the heart of the Magten objection that this is premature, that
16 the matter ought to be fully negotiated and brought to the
17 Creditors before we get to that point.

18 For those of you who do Chapter 11 work only, you don't
19 probably run into the conflicts that often occur between
20 domestic relations law and bankruptcy law. That's something
21 where I unfortunately spend a good deal of my time on when I'm
22 back in Arizona. The conflict between environmental laws and
23 bankruptcy laws is not that different, because basically there
24 are two sets of laws that are designed to achieve different
25 purposes. And they're both Congressional statutes. And we

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1 have to figure out the best way we can to resolve them and make
2 them fit together in the context of a company that's in Chapter
3 11, and also in the context of the rights and remedies that are
4 given to the governmental agencies that are charged with
5 enforcing environmental laws, particularly in this case CERCLA.
6 So in an ideal world it would be good, I think, to know what
7 the scope of the releases are that are to be obtained by the
8 Debtor. And in a purely financial context I think that
9 normally is part of any deal that is brought to the Bankruptcy
10 Court. However, that's not necessarily the same in the case of
11 these environmental enforcement activities where there is in
12 fact a different -- as was suggested by counsel for ARCO,
13 there's certain standard procedures, certain kinds of scopes of
14 the releases, certain kinds of points on which there is a
15 practice of negotiating and so on, and there may not be
16 finality of the kind that we are always used to in the
17 bankruptcy context.

18 So the issue here is whether or not this deal, imperfect
19 because it's incomplete, is nonetheless in the best interest of
20 the Estates, such that -- about to be approved so that it can
21 go to the next step. Counsel for Magten has concluded that
22 really it doesn't have a true forum in which to make the kinds
23 of arguments it would make in the Bankruptcy Court, if it were
24 to file its comments in front of the District Court, that the
25 District Judge may not take those into account the same way as

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1 in the Bankruptcy Court which is where the District Judge is
2 really looking at it from the CERCLA standpoint, whereas I
3 would be looking at it from the bankruptcy standpoint. And
4 those are different things. And to a certain extent I'm
5 sympathetic with that. But I don't think that that overrides
6 the overall best interest of the Estate. I do think it's in
7 the best interest of the Estate to move this matter as far as
8 possible toward resolution. And I am convinced by the
9 presentations of counsel, the availability of the witnesses,
10 and the representations and the avows of what it is that the
11 witnesses would say, that this is in a posture now in a very
12 complicated, long, difficult negotiation over the course of
13 many years, that it's important to move it to the next step,
14 and that in order to move it to the next step this contingent
15 approval by the Bankruptcy Court is required.

16 I am not willing to accept that there is no meaningful
17 forum at the District Court, because I assume that the District
18 Judge will take his or her responsibility very seriously when
19 faced with that issue if in fact there are comments made. And
20 I'm sure that's true when the District Judge is looking at a
21 matter that is in his or her backyard that is very well known
22 in that part of the country as being a very serious and
23 substantial environmental issue. So it is not a matter, I
24 think, that will be taken lightly or perfunctorily at that
25 level, if in fact there are legitimate issues that are raised

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1 to the scope of the releases. So I am -- I will conclude that
2 the Debtor and the various other proponents have demonstrated
3 that this is in the best interest of the Estate, that this does
4 meet the standards of approval of a settlement, that there are
5 substantial risks involved for the Debtor not to settle, there
6 are issues that the Debtor is in effect giving up by doing
7 this, but that's the essence of a settlement. And that the
8 other constituencies, including the Creditors Committee and
9 others -- and the lack of objection from other parties indicate
10 that this does have support at least from those entities.

11 So balancing those things together, and dealing as we are
12 here in the difficult intersection between two sets of Federal
13 laws that are not really designed to protect the same interest,
14 the same level of finality and perfection, I think, is not
15 necessary here. And I am -- or not achievable here. And I am
16 convinced that there are adequate safeguards that exist down
17 the road, such that once the scope of these releases is in fact
18 finally negotiated, that there will be an adequate opportunity
19 for them to be heard and determined by the Courts of
20 appropriate jurisdiction. So based upon that I will grant the
21 motion and will sign the Orders.

22 MS. DENNISTON: Thank you, Your Honor. We'll submit
23 an Order after we've circulated it to counsel. With that, Your
24 Honor, we turn to matter #21, which is the 328 notice filed by
25 Magten.

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1 MS. MILLER: Good afternoon, Your Honor, Kathy Miller
2 on behalf of Magten. I have with me my co-counsel, Bijian
3 Amini of the New York law firm of Storch, Amini & Mundes. We
4 filed his motion for pro hac admission. I do not believe it's
5 been signed yet. And with Your Honor's permission we'd ask
6 that he be able to address the Court today.

7 THE COURT: So ordered.

8 MR. AUSTIN: Your Honor, on behalf of Paul, Hastings,
9 we have separately retained counsel who is a member of the
10 Delaware bar, Mr. Charles Sumina, of the firm of Finger &
11 Sumina. And he will be responding as it relates to Paul,
12 Hastings today. At some point I think the Court need be aware
13 of at least what Paul, Hastings has done in addition to
14 retaining separate counsel to present the case on that -- this
15 issue today, as to what we've done to at least remove what even
16 may be an appearance of any impropriety since this statement on
17 328(c) was filed. And I can do it either now or at the
18 conclusion of when anyone else may have made a statement.

19 THE COURT: All right. Why don't we let Magten's
20 counsel proceed, and then I'll hear from Paul, Hastings.

21 MR. AMINI: Good afternoon, Your Honor. I'm kind of
22 in an odd position, because this is not a motion, Your Honor,
23 and I did not request a hearing. Paul, Hastings' counsel
24 requested the hearing. We merely filed an informational notice
25 under 328(c) that we believed circumstances had arisen that

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1 raised the question of Paul, Hastings disinterested, at least
2 as regards a specific adversary proceeding. I think they have
3 since withdrawn as counsel. In fact, I know they have. They
4 gave us notice of it. Even though we asked them about this
5 back in March, they gave us notice of this last week -- I
6 believe Wednesday of last week. I don't believe that there's
7 an issue today as regards that notice that's ripe for any
8 adjudication. Our position was simply if you proceed as
9 counsel, you do so at your own risk. And their position
10 ultimately became after proceeding as counsel for some period
11 of time, "We're withdrawing." To the extent that there's
12 issues of their compensation, I think that from everything I've
13 seen -- not being a bankruptcy lawyer, but from all the cases
14 I've read, that is better addressed in the context of an actual
15 application for compensation.

16 There is a related issue that I would like to bring to the
17 Court's attention if Your Honor so permits today. Just in the
18 interest of efficiency in this matter, last Friday we filed a
19 motion to have Paul, Hastings disqualified as counsel for the
20 Debtor in the main case. The related issue -- and that was
21 noticed, I believe, Your Honor, for the July 21 date, which I
22 understood is being moved back now to July 14.

23 THE COURT: Well, there never was a July 21 date.
24 That's the problem. Because I'm not here during the week of
25 July 21. I'm here during the previous week. So it was then

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1 moved to the 15th, and then it was moved to the 14th because we
2 have more time on the 14th because of the cancellation of this
3 trial.

4 MR. AMINI: Okay. I have a brief request related to
5 that, that it be moved to the 15th only because I'm in
6 California on a matter that I'm committed to and can't get out
7 of on the 13th, and would have to be on a red eye to be here on
8 the 14th. But I think I can reserve that to the end. The
9 issue that I would like to raise with Your Honor today is an
10 issue of disclosure. I believe that there has never been
11 disclosure under I believe it's Rule 2014, by Paul, Hastings of
12 their role in the transactions, over which we are all -- we all
13 have this dispute, the -- I think it's what Your Honor refers
14 to in some of Your Honor's opinions as the "going flat
15 transaction". There was an initial --

16 THE COURT: I didn't come up with that.

17 MR. AMINI: There was an initial affidavit filed by
18 the Debtor's counsel in support of their retention in
19 September, in which they stated in no uncertain terms that even
20 though they had represented the Debtor and certain of its
21 affiliated non-Debtor entities in other non-bankruptcy related
22 matters -- and then it went on to describe a number of things
23 that do not relate to this one section that I will tell Your
24 Honor -- there's never been any further disclosure. We have
25 since concluded, based on the circumstantial evidence that

1 we've seen, that in fact they had extensive dealings and
2 representation of not only the Debtor, but Clark Fork, the
3 subsidiary at issue, in a number of different matters, as well
4 as they were also counsel in a number of matters related to the
5 going flat transaction, specifically the lending transactions
6 that came afterwards. I don't know how familiar Your Honor is
7 with this, but they acquired the assets, I guess formally I
8 believe in August of 2002 in the form of a subsidiary. They
9 moved the assets from the subsidiary to the parent I believe in
10 November of 2002. They entered into a lending agreement with
11 the banks in December of 2002, although that agreement was not
12 actually consummated 'til 90 days -- a little bit -- 91 days or
13 90 days after they transferred the assets, in February of 2002.

14 THE COURT: 2003.

15 MR. AMINI: 2003, Your Honor. I stand corrected.
16 Yes, Your Honor. And then they announced -- I don't know to
17 what extent this was related, but they announced in April of
18 2003 that some \$900,000,000 that had otherwise appeared on
19 their books as assets was no longer there, and had vanished.

20 We believe that in the context of this case, as a
21 preliminary matter, even before we get to the motion which will
22 be on the motion to disqualify, that there has to be
23 disclosure. And we would like Your Honor to invite them -- I
24 think that's the way it's put in some of the cases I read -- to
25 make that disclosure so that on July 21 or 14 or whatever day

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1 it is that we will have this hearing, we do have a full record
2 from which to work on. And I believe today is probably just
3 turns out by just happenstance -- I mean I didn't think there
4 was -- I don't think that 328(c) is an issue, or should be an
5 issue there. I thought today would be a good day to actually
6 ask Your Honor if we could get a direction that there be that
7 disclosure. 2014 is pretty clear, you're supposed to disclose.
8 And I can read Your Honor the rule.

9 THE COURT: Specifically what you're talking about is
10 disclose the extent to which they were involved in rendering
11 legal services in connection with the series of transactions,
12 including the 2003 financing?

13 MR. AMINI: That's right, as well as I would say all
14 of the services that they have performed for Clark Fork. I
15 mean I think we heard here today, you know, they're not even
16 giving you a representation that in the context of the matter
17 that was on just before me -- and I don't profess to know the
18 ins and outs of that matter -- but there's no representation
19 that they aren't continuing to represent Clark Fork. They may
20 have dual representation as we sit here today. And I think
21 that that is a relevant fact that will be a factor that we
22 would ask Your Honor to consider when we ultimately get to the
23 issue of whether they're qualified to act as counsel for the
24 Debtor or not. I think it almost goes -- I mean all the cases
25 I read talked about full, candid, complete disclosure. And

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1 those were the three words. And I do not believe there is a
2 single disclosure of actual representation of Clark Fork except
3 in the context of the McGreevy action. In the McGreevy action
4 I noticed that there was a statement that they had represented
5 McGreevy.

6 And to give you some idea of the difficulty we face in
7 trying to determine what they really did in these transactions
8 -- which is critical to the position we'll take -- I mean they
9 may tell us something that could alter our view of this -- but
10 to give you some -- the McGreevy stipulation that Your Honor
11 issued an opinion on I believe last week, we went immediately
12 to that. And their name appears nowhere. But if you go back
13 to their original affidavit, they say they were in fact counsel
14 to Clark Fork on that matter. So, you know, we're left to
15 travel somewhat in the dark, other than the fact that we know
16 from our allegations that we've made in complaints against them
17 as well -- in a complaint against them, that they represented
18 Clark Fork, and which they've never denied in any of these
19 affidavits, that we're fairly certain that they do have some
20 representation of Clark Fork. We just don't know the extent of
21 it. If there's anything else, Your Honor --

22 MR. AUSTIN: Well, Your Honor, with the comment by
23 Magten's counsel that there's no issue today ripe for
24 adjudication with 328(c), then I think we will save the powder
25 as it relates to our own counsel, and ultimately will be

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1 responding to the motion to disqualify. If what Mr. -- Magten
2 is looking for is a supplemental affidavit, we will file a
3 supplemental affidavit as it relates to the Clark Fork
4 relationship, such as they may otherwise be.

5 THE COURT: The Clark Fork relationship and the
6 relationship having to do -- I guess anything having to do with
7 this series of transactions, the so-called going flat
8 transactions and the subsequent financing.

9 MR. AUSTIN: We will file that, Your Honor. And in
10 fact I think our affidavit already disclosed that we did
11 represent Northwestern as it related to the subsequent
12 financing, because of the fact that there was -- we had to make
13 disclosure that at one point we had some relationship with
14 CSFB. So there's no question that we've always represented
15 Northwestern with respect to the CSFB financing. But we will
16 file a supplemental affidavit. And we'll get that on the
17 record.

18 One point of clarification though is, if I do understand,
19 that there are no objections actually to our fee applications
20 which have been filed. I would like to make sure then that
21 frankly we could get paid what we have otherwise we've made
22 applications for. When -- one thing that I was going to advise
23 the Court is that when this 328(c) statement was filed, even
24 though it is not couched in the term of an objection, and even
25 though Magten has never filed an actual objection to our

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1 monthly fee applications, until this matter came before the
2 Court, our firm chose not to accept payments from the Debtor
3 under the Case Management Order which would allow the Debtor to
4 pay to our firm 100% of expenses and 80% of fees and expenses
5 which had been incurred. At this point for fees and expenses
6 incurred in March and April for which we had filed our fee
7 statements, we have received nothing on that. So that if I'm
8 clear in that there are no objections to that, we will be
9 asking the Debtor to make payments on at least the 100% of the
10 expenses, and 80% of the fees which would be in accordance with
11 the Case Management Order.

12 THE COURT: Where do we stand now with regard to the
13 review of all of these interim applications by the fee
14 examiner?

15 MR. AUSTIN: The fee examiner last week, Your Honor,
16 filed statements as relates to a number of the applications. I
17 know that the Greenberg firm filed it as it relates to Al
18 Resmarcel, Leonard Street, and a few others. We have been
19 working with the fee examiner to address his comments. And I
20 believe his report -- and Ms. Denniston may know more -- but I
21 believe it should be filed this week or early next week as it
22 relates to Paul, Hastings.

23 MS. DENNISTON: Your Honor, that's more or less
24 accurate. Paul, Hastings has been working with the fee
25 examiner to provide additional detail on the all team

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1 conferences. And that required a fair amount of research. The
2 fee examiner, I understand, is more or less satisfied. We're
3 providing our written comments to the report this week.

4 THE COURT: Thank you.

5 MR. AUSTIN: Thank you, Your Honor.

6 THE COURT: Well, excuse me. You were going to tell
7 me other things. And I think --

8 MR. AUSTIN: Well, I think --

9 THE COURT: -- counsel for Magten may want to --
10 without, you know -- keeping your powder dry, I understand
11 that. But counsel for Magten said for example that you've
12 withdrawn in the litigation. Is that in the Magten litigation?

13 MR. AUSTIN: That's correct. I think this Court's
14 aware -- and what I was going to advise the Court is that, you
15 know, Magten has asserted claims against Northwestern's
16 transfer of assets from Clark Fork and Blackfoot on what's
17 referred to as the going flat transaction. And that issue has
18 been joined in an opinion adversary against the Debtor, which
19 this Court has transferred to Judge Lindsay for disposition.
20 There's been a briefing schedule set in that adversary. What
21 we have done as related to that case, we certainly believe and
22 will ultimately defend that there's no conflict --

23 THE COURT: Let me just --

24 MR. AUSTIN: Sure.

25 THE COURT: -- back up for a minute. There is the

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1 Magten adversary, and then there is the McGreevy case. So
2 they've filed -- McGreevy filed its case.

3 MR. AUSTIN: No, Your -- McGreevy has not yet filed
4 its case on asserting fraudulent conveyance, Your Honor. And
5 one reason it has not is that we are actually engaged in
6 substantive settlement negotiations with McGreevy Plaintiffs at
7 this point, so they've not yet filed that adversary case.

8 THE COURT: But in any event the Magten case is
9 pending.

10 MR. AUSTIN: The Magten case is pending. It's been
11 transferred to Judge Lindsay by your Order.

12 THE COURT: No. Right. Frankly that might have
13 gotten transferred, you know, in a bulk way, because we were
14 transferring adversaries. If anybody thinks that it's better
15 not to transfer that because it needs to continue in
16 cooperation, so to speak, or in tandem with confirmation, then
17 I'd entertain an Order or I would be happy to talk to Judge
18 Lindsay about that, if that's what you think we ought to do. I
19 don't think I made a conscious decision, frankly, to transfer
20 that particular adversary to Judge Lindsay, as opposed to a
21 garden variety of, you know, one of 1,000 preference cases that
22 may need to be transferred. I just certainly notice on that
23 that that's open to dispute, or open to reconsideration if you
24 want to. If you don't, and you're happy with it, that's fine
25 too.

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1 MR. AUSTIN: We may -- we will evaluate that, Your
2 Honor. We'll -- in all candor, a number of us were wondering
3 how that case did get transferred with some of the others in
4 connection with the confirmation. I will note that based on
5 what --

6 THE COURT: It was just done. And frankly it was done
7 because it slipped through the cracks. So if you want me to
8 change that, I'd be happy to do so subject to my talking to
9 Judge Lindsay about it.

10 MR. AUSTIN: I will note that Judge Lindsay for -- in
11 the matter of full disclosure, Your Honor, Judge Lindsay did
12 schedule -- set a briefing schedule which Magten, I believe,
13 responded to last week. And we have -- not we -- Northwestern
14 has a response date of the 25th to file a reply brief. Because
15 what Northwestern had previously done had moved to dismiss that
16 lawsuit on a paid Estate claim. Be that as it may --

17 THE COURT: Well, talk about it with Magten, or Magten
18 also has the right to do whatever, and see if it's worth doing
19 something on it. Just file it if you think that's appropriate.

20 MR. AUSTIN: Be that as it may, Your Honor, and
21 irrespective of what our own perspective was on conflict, Paul,
22 Hastings has indeed withdrawn as counsel of record in that
23 adversary case against Northwestern. That case is being
24 handled by co-counsel, Greenberg, Traurig. In addition, if and
25 when we get to filing claim objections, and Northwestern filed

1 claim objections to Magten, claims objections of Magten will
2 also be handled by Greenberg, Traurig. As I noted, Your Honor,
3 earlier, we had retained our own counsel, Finger & Sumina, to
4 represent us on the 328 issue. In addition, this Court I
5 believe is aware from papers that have been filed that Magten
6 as severally filed suit against officers of Clark Fork in
7 Montana, and has severally filed suit against Paul Hastings in
8 Montana. And we obviously have retained our own counsel to
9 represent us in Montana. We have a Montana firm, as well as
10 the firm of Davis, Polk & Wardwell representing our interest to
11 defend against the plethora of litigation which Magten has
12 initiated.

13 Those are the things which we have done, Your Honor, to
14 try and make sure where we do not believe, did not believe we
15 had a conflict and we were made disinterested, we've done --
16 irrespective of that, we have done or tried to further shield
17 ourselves to make sure that at least with Magten related
18 matters we don't appear to be inappropriate in how we're trying
19 to interface with them in resolving its claims against the
20 Debtor's Estate. And indeed I can also state that whenever the
21 U.S. Trustee has raised questions with us about further need
22 for disclosures, and I believe that they can represent on that,
23 we have been cooperative in providing additional disclosure to
24 the U.S. Trustee. And we will file a supplemental affidavit as
25 has been requested here today. Thank you.

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1 THE COURT: All right. Sorry. I guess I really
2 should have addressed my comments to Greenberg, Traurig with
3 regard to the transfer of the Magten litigation. So proceed
4 however you think is right. I'm just being honest with you. I
5 think that was not a conscious decision on my part to do that.

6 MR. KAPLAN: Your Honor, just on that litigation from
7 Magten's perspective, because obviously as Your Honor is aware
8 Magten views that as a central issue to the Chapter 11 case and
9 to the Plan. And while Judge Lindsay obviously can address the
10 issues in a vacuum, we think it's important that this Court be
11 able to control the timing of that matter. And we would
12 request, Your Honor, that if that is possible, that it be
13 pulled back into Your Honor's Court as opposed to waiting for
14 timing and trying to develop the issue over the next couple of
15 weeks.

16 MR. CHIPMAN: Your Honor, for the record William
17 Chipman of Greenberg, Traurig. On the Magten issue I'd like to
18 just take it back to our team, talk to them. We'll talk to
19 counsel for Magten, the Committee, and we'll do what's
20 appropriate.

21 THE COURT: All right. Well I'm here this week, so if
22 something needs to be done this week, then --

23 MR. CHIPMAN: Thank you, Your Honor.

24 THE COURT: -- you can reach me this week.

25 MR. AMINI: Just briefly, two points I'd like to make

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1 very briefly. One is I don't want to leave the Court with the
2 impression that I'm not objecting to at least two things. One,
3 we asked them repeatedly to withdraw from the litigation. They
4 took it upon themselves to file applications both against the
5 permission to file this suit in the first case, and also the
6 Motion to Dismiss, as I understand, came from Paul, Hastings.
7 This was well after we had put them on notice. In fact, the
8 Motion to Dismiss I believe came after our 328(c) notice.
9 That's one.

10 Two, in terms of the fee application I have not seen, and
11 it may well have been filed and I just -- I was not made aware
12 of it, but I have not seen any application related to this
13 particular adversary proceeding. I mean I haven't seen
14 anything that's carved it out. And we certainly will reserve
15 on that, as well as once the affidavit is filed we will reserve
16 on Magten's position with respect to the compensation in toto
17 for the Paul, Hastings firm.

18 And finally, very briefly, I have my short scheduling
19 problem, Your Honor. And I realize it's my problem, but I was
20 wondering if the 14th -- it wasn't clear to me if both those
21 days were being held and it was going to carry over to the
22 15th. If it's going to carry over to the 15th, I would like to
23 have the disqualification motion teed up for the 15th as
24 opposed to the 14th. Otherwise you're just going to find a
25 very red-eyed person standing in front of you in the morning.

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1 THE COURT: Well, we have that time at 10:30 on the
2 15th. Do you have any objection to that, Mr. Austin?

3 MR. AUSTIN: I don't, Your Honor. I'd check with my
4 counsel who would otherwise address it.

5 THE COURT: All right. So why don't we then -- we'll
6 move the Motion to Disqualify off the Omnibus calendar to the
7 time set previously, which is 10:30 on the 15th. I don't know
8 what else we have then. Do you have any idea how much time we
9 will expect this to need? Mr. Amini, do you know how much time
10 we're talking about?

11 MR. AMINI: I don't know, Your Honor. I would imagine
12 about a half an hour or so.

13 THE COURT: I'm sure we have an hour set aside. Okay.

14 MR. AMINI: Thank you, Your Honor.

15 THE COURT: With regard to the question on the fee
16 applications and the fee procedures, there was a fee procedure
17 that was entered at the beginning of this case that set up a
18 procedure whereby the various professionals would file monthly
19 fee statements and serve them in certain ways. And failing
20 objection, to be paid 80% of fees, and 100% of expenses. Then
21 on a periodic basis there would be interim fee applications
22 that would be filed. The first time we had those come up is
23 when the fee examiner went into place. I think that was the
24 first time. Or maybe it was the second time.

25 MR. AUSTIN: That was correct, Your Honor. First

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1 time.

2 THE COURT: Yeah. And so that procedure is now in
3 place. And even then those were the interim awards. So I
4 guess my view of this is that the procedures that are in place
5 should remain in place. And, therefore, in the absence of
6 objection, specifically to the monthly statements, then counsel
7 can be paid. These are all interim awards. Actually, they're
8 not even interim awards. They're interim payments before
9 they're even an interim award. And if there's a disgorgement
10 order or reduction of fees or whatever, then that's one reason
11 we have the 20% holdback. And the other reason is of course
12 that the firms are then financially responsible for that. So
13 it seems to me the system is in place to work, and we don't
14 need to make any specific changes based upon what's happening
15 here.

16 MR. AUSTIN: Thank you, Your Honor.

17 MS. DENNISTON: Thank you, Your Honor. With regard to
18 the Agenda, I believe this leaves the claims matters, beginning
19 with matter #6. And Mr. Chipman will be handling those.

20 MR. CHIPMAN: Good afternoon, Your Honor. For the
21 record, William Chipman of Greenberg, Traurig. Your Honor,
22 what I propose to do is just go through these in the order of
23 the Agenda, starting with Item #6. Does that --

24 THE COURT: All right.

25 MR. CHIPMAN: -- make sense?

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1 THE COURT: Sure.

2 MR. CHIPMAN: Your Honor, Item #6 is the Debtor's
3 Sixth Omnibus Objection to Claims. These are all late-filed
4 claims. It's a non-substantive objection. The Debtor has
5 withdrawn the objection with regard to Minerals Management
6 Service. Therefore, the Order we're seeking to be entered
7 today will not affect their claim at all. There was an
8 objection filed by Ray Peterson Electric. It was a letter
9 objection. It wasn't a formal objection, Your Honor.
10 Basically what Mr. Peterson says in his objection is, "Yes, we
11 filed it late. But forgive us, Your Honor." And set forth the
12 reasons therein. There was also a letter received from South
13 Wire, Your Honor. And basically South Wire pointed out that
14 their late-filed claim was actually an amended claim, so I have
15 stricken them from the exhibit also. So really the only
16 objection going forward would be to Ray Peterson Electric.
17 And, Your Honor, the facts of that, the claim was filed on
18 4/15/04, several months after the bar date. They admit in
19 their letter that this was filed late. They do not argue in
20 there that they didn't receive the objection. And, Your Honor,
21 they ignore the Pioneer factors in the 3rd Circuit for
22 excusable neglect in their response. With that, Your Honor,
23 I'll leave it to Your Honor whether or not -- I'll leave it
24 actually -- I'll cede the podium to Ray Peterson Electric if
25 they're here today to argue their objection.

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1 THE COURT: Is there anybody here on behalf of Ray
2 Peterson Electric? Or on the telephone?

3 (Pause in proceedings)

4 THE COURT: I've reviewed the letter from Ray Peterson
5 Electric on the circumstance of this case. I think it shows
6 good cause to allow the late filed claim, so I'll overrule the
7 objection and allow the claim to be filed.

8 MR. CHIPMAN: Okay. Your Honor, if I may, I'll just
9 interlineate the Form of Order and hand it up.

10 THE COURT: All right, thank you.

11 MR. CHIPMAN: May I approach?

12 THE COURT: Please.

13 (Pause in proceedings)

14 THE COURT: I've signed the Order and initialed the
15 exhibit.

16 MR. CHIPMAN: Thank you, Your Honor. Item #7 on the
17 Agenda, Your Honor, is the Seventh Omnibus Objection to Claims.
18 This is an amended, non-substantive objection. No responses
19 were received, Your Honor. We filed a CNO on 6/14, and the
20 Debtor respectfully requests that Your Honor enter the Order
21 that was attached to the motion. And I do have a Form of
22 Order.

23 THE COURT: Anyone else wish to be heard in connection
24 with Item #7? Hearing no one, I'll sign the Order.

25 MR. CHIPMAN: Your Honor, the next item on the Agenda

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1 is #8. It's the Eighth Omnibus Objection to Claims. These
2 were claims filed against the wrong party -- the incorrect
3 party. It's a non-substantive objection. A Certificate of No
4 Objection was filed on 6/14, Your Honor. We have not received
5 any objections, and we respectfully request that Your Honor
6 enter the Form of Order that was attached to the objection.

7 THE COURT: Anyone else wish to be heard in connection
8 with Item #8? Hearing no one, I'll sign the Order.

9 MR. CHIPMAN: Thank you, Your Honor. Your Honor, Item
10 #9 on the Agenda is the Debtor's Objection to Duplicative Claim
11 #1041 of Arizona Department of Revenue. Certificate of No
12 Objection on this was filed on 6/14, Your Honor. There were no
13 objections, and I do have a Form of Order. It's the same Form
14 of Order that was attached to the objection.

15 THE COURT: All right. Anyone else wish to be heard
16 in connection with Item #9?

17 MR. CHIPMAN: May I --

18 THE COURT: Hearing no one, I'll sign the Order.

19 MR. CHIPMAN: Thank you, Your Honor. Your Honor,
20 jumping ahead to Item #17 on the Agenda, we're going back to
21 the Debtor's First Omnibus Objection. If Your Honor recalls,
22 we continued three objections from the May hearing to today. I
23 have resolved the Estate of Orwell Meyers objection, Your
24 Honor. Basically what that's going to allow for -- it actually
25 resolves the First Omnibus Objection and the Second Omnibus

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1 Objection. What this does as I just clarified for counsel for
2 Orwell Meyers that Claim #955 and Claim #1021 were objected to
3 as being late, and they were objected to as being duplicates.
4 Both of these orders will allow Claim #944 to survive. So in
5 essence what this does is it gets rid of the duplicates and the
6 lates, and just allows the legitimate claim to be filed.

7 We put on the hearing for today the objection of -- or the
8 response of Sandra Sage, Claim #912. This was filed a day
9 late. And given Your Honor's previous ruling, I probably
10 should remove this from the exhibit. However, I would point
11 out that this claim is for a -- basically Sandra Sage has filed
12 a proof of claim for her interest in the Debtor. She owns
13 stock. So it was filed late, but in any event if Your Honor
14 does allow us to expunge that claim, it's not impacting her
15 rights as an interest holder. And if you look at the claim and
16 the attachment to the claim, it's basically for an investment
17 in Northwestern stock. So I'll defer to Your Honor on that
18 issue.

19 The third item, third objection that's still outstanding
20 on the First Omnibus is the Car Wash Guys objection. And that
21 also was filed late. And I would, given Your Honor's prior
22 ruling on the late filed claims, I'll defer to Your Honor
23 whether to strike that.

24 THE COURT: Well, with regard to the claim that is
25 solely based upon the equity interest, I don't think it would

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1 further the case to deny your Motion to Expunge now, and then
2 expunge it later, because I'm not sure the Claimant would
3 understand that. And it would probably be more bureaucracy
4 than it's worth. Now, I don't have that right here in front of
5 me. I was just looking for it. Which tab should I be looking
6 at?

7 MR. CHIPMAN: Your Honor, if I could have a moment, I
8 have to go to my binders.

9 THE COURT: Oh, I think my binders -- I'm not sure --
10 I didn't --

11 MR. CHIPMAN: I think there's four --

12 THE COURT: -- bring those binders.

13 MR. CHIPMAN: -- of them.

14 THE COURT: No, I understand. And I think I left them
15 back in my chambers. So let me take a -- the ones on the
16 claims objections. I don't need to see them if you can just --
17 I would just like to look briefly at that to convince myself
18 that she has a purely equity claim.

19 MR. CHIPMAN: That's fine. The reason we know that,
20 Your Honor, is that she's attached attachments. And it was --
21 she sent it through the depository trust company, which all the
22 claims that came in for equity holders came through depository
23 trust companies. So does Your Honor want to hold off on that?

24 THE COURT: And then the second one was the Car Wash
25 Guys.

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1 MR. CHIPMAN: The Car Wash Guys.

2 THE COURT: Did they have --

3 MR. CHIPMAN: They filed a late claim.

4 THE COURT: -- a similar story to the electrical
5 company?

6 MR. CHIPMAN: Yeah, that they just --

7 THE COURT: He had a pretty long --

8 MR. CHIPMAN: -- missed the deadline.

9 THE COURT: -- you know.

10 MR. CHIPMAN: I think they said that the mail out
11 there is not too --

12 THE COURT: All right. Why don't we -- we'll expunge
13 the equity claim, and we'll allow the Car Wash Guys. How does
14 that sound?

15 MR. CHIPMAN: Thank you, Your Honor.

16 THE COURT: How much are the Car Wash Guys?

17 MR. CHIPMAN: I think it's a small claim, \$1,500,
18 thereabouts, Your Honor. Your Honor, may I approach?

19 THE COURT: Please.

20 MR. CHIPMAN: Thank you. And, Your Honor, I already
21 told you about the resolution of the Second Omnibus Objection.
22 May I hand up the Order on that?

23 THE COURT: Please.

24 MR. CHIPMAN: Thank you.

25 (Pause in proceedings)

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1 THE COURT: All right, I've signed the Orders.

2 MR. CHIPMAN: Your Honor, the next item is Agenda Item
3 #22. It's the Fifth Omnibus Objection to Claims, books and
4 records claims. Exhibit A to the motion was reduce and allow,
5 and Exhibit B was expunge. There were two responses filed, and
6 a whole host of objections that by agreement have been
7 continued. We have continued the Rory and Theresa Minjares
8 response to the next hearing. And we've also agreed to
9 continue the Rohr claim response. In addition as indicated in
10 the Agenda, Claim numbers 736, 756, 763, 818, 820, 821, 836,
11 862, 864, 866, 427 filed by Comanche Park, and again 793 by the
12 Rohrs, and Claim #835 have all been continued to a later date.
13 And I have amended the Form of Order to remove those claims
14 from the objection. And I do have a Form of Order unless
15 anyone wants to be heard.

16 THE COURT: Anyone wish to be heard in connection
17 with --

18 MR. CULVER: Your Honor, this is Triel Culver on
19 behalf of Rory and Theresa Minjares. Just a point of
20 clarification. I'd like to know what date the hearing is going
21 to be continued to.

22 THE COURT: July 14th at 9:30.

23 MR. CULVER: Thank you, Your Honor.

24 MR. CHIPMAN: May I approach, Your Honor?

25 THE COURT: Please.

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